

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

NORMA J. FIORENTINO, CRAIG) Case No. 3:09-cv-02284-TIV
SAUNTER, JULIA SAUNTER,)
MICHAEL ELY, ANDREA ELY, RAY) (The Honorable Thomas I. Vanaskie)
HUBERT, VICTORIA HUBERT,)
RONALD CARTER, SR., JEAN) Electronically Filed
CARTER, WILLIAM T. ELY, SHEILA)
A. ELY, SAMANTHA SEBJAN,)
JIMMY LEE SWITZER, VICTORIA)
SWITZER, NOLEN SCOTT ELY,)
MONICA LAURA MARTA-ELY,)
JESSICA ELY, JUSTIN ELY, NOLEN)
SCOTT ELY, as the Executor of the)
Estate of Kenneth Ray Ely, RICHARD)
SEYMOUR, WENDY SEYMOUR,)
TODD CARTER, JEANNETTE)
CARTER, PATRICIA FARRELLI,)
ERIK B. J. ROOS, SUSAN M. ROOS,)
FRANK NOBLE, KAREN NOBLE,)
RAYMOND KEMBLE, EMMAGENE)
E. SAMOYELY, KENNETH ELY,)
DEBORAH ELY, GREGGORY)
NEWELL, COLLEEN NEWELL,)
JUSTIN NEWELL, JENNIFER)
NEWELL, TAMARA CARTER,)
SHELLEY WEAVER, JAMES)
COSTELLO, JULIE COSTELLO,)
DOUGLAS R. HEITSMAN, JOANN)
HEITSMAN, and ANNE M.)
HEITSMAN,)
Plaintiffs,)
v.)

**CABOT OIL & GAS CORPORATION)
and GAS SEARCH DRILLING)
SERVICES CORPORATION,)
)
Defendants.)**

**DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' SECOND
AMENDED COMPLAINT**

Defendants Cabot Oil & Gas Corporation (“Cabot”) and Gas Search Drilling Services Corporation (“Gas Search”) (collectively, “Defendants”), by and through their undersigned counsel, hereby move, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss the First, Fourth, Seventh and Eighth Causes of Action contained in Plaintiffs’ Second Amended Complaint (“Complaint”) filed against them by plaintiffs Norma J. Fiorentino, *et al.* (collectively, “Plaintiffs”). In support of this Motion, Defendants state the following:

1. On or about November 19, 2009, Plaintiffs filed their initial Complaint (“Initial Complaint) against Defendants in the United States District Court for the Middle District of Pennsylvania.
2. On or about December 11, 2009, Cabot accepted service of the Initial Complaint on behalf of Defendants.
3. The parties stipulated to an extension of time pursuant to which Defendants were permitted to move, plead or otherwise respond to the Initial Complaint until on or before January 29, 2010. Plaintiffs filed a Motion to

Dismiss and Memorandum of Law in Support thereof, and a Motion to Strike and Memorandum of Law in Support thereof, on January 29, 2010.

4. On March 5, 2010, Plaintiffs filed Memoranda of Law in Opposition to Defendants' Motion to Dismiss and Motion to Strike, and their First Amended Complaint. On March 8, 2010, as a result of the amendment of Plaintiffs' Initial Complaint, the Court dismissed as moot the pending Motions to Dismiss and Strike portions of the Initial Complaint.

5. On March 17, 2010, the Parties filed a Motion for Extension of Pre-Trial Deadlines and proposed revised Joint Case Management Plan to pursue discussions regarding resolution of this matter. On March 18, 2010, the Court granted this request and adopted the Parties' revised Joint Case Management Plan, which set forth a deadline of June 1, 2010 for Defendants to file a new Motion to Dismiss and Motion to Strike Plaintiffs' First Amended Complaint.

6. On May 17, 2010, Plaintiffs filed a Second Amended Complaint. Defendants now move to dismiss certain causes of action in Plaintiffs' Second Amended Complaint.

7. As discussed more fully in the Memorandum of Law in Support of Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint, which is being filed concurrently herewith and which is hereby incorporated by reference herein, the First, Fourth, Seventh and Eighth Causes of Action contained in the

Complaint fail to state claims upon which relief may be granted and, therefore, should be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6).

WHEREFORE, Defendants request that this Court grant their Motion to Dismiss and enter an order pursuant to Federal Rule of Civil Procedure 12(b)(6) dismissing the First, Fourth, Seventh and Eighth Causes of Action contained in Plaintiffs' Complaint with prejudice for failing to state claims upon which relief may be granted.

K&L GATES LLP

Dated: June 1, 2010

s/ Richard W. Hosking

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Attorneys for Defendants

LOCAL RULE 7.1 CERTIFICATION

I hereby certify pursuant to Local Rule 7.1 of the United States District Court for the Middle District of Pennsylvania that on June 1, 2010, counsel for Defendants conferred in good faith with counsel for Plaintiffs in an attempt to obtain concurrence for this Motion and that said concurrence was denied.

s/ Richard W. Hosking

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendants' Motion to Dismiss was electronically served on Plaintiffs' counsel and all counsel of record on June 1, 2010 via the Court's electronic filing system.

s/ Richard W. Hosking